



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Tritex Corporation

**File:** B-247675.2

**Date:** August 6, 1992

Mark Fox Evens, Esq., Keller and Heckman, for the protester.  
Marc Lamer, Esq., Kostos and Lamer, for DJ Manufacturing Corporation, an interested party.  
Michael Trovarelli, Esq., and Diane Cherinchak, Esq., Defense Logistics Agency, for the agency.  
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency improperly concluded that solicitation prohibited a relative evaluation of offerors' quality assurance plans where, under the most reasonable interpretation, the solicitation provided that the plans would receive a relative evaluation. Nevertheless, the General Accounting Office will not object to the agency's action in terminating the protester's contract and making award to the low priced offeror since the evaluation does not show a meaningful distinction between the plans, and nothing in the record indicates that the protester would have submitted a different proposal had it been informed that quality assurance plans would have been evaluated on an "acceptable/unacceptable" basis.

### DECISION

Tritex Corporation protests the termination of its contract for combat field packs and the proposed award of a contract for those same field packs to DJ Manufacturing Corporation under request for proposals (RFP) No. DLA100-91-R-0396, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA). DLA terminated Tritex's contract because the agency concluded that it had improperly evaluated proposals under the RFP evaluation factor pertaining to quality assurance plans. Tritex argues that the original evaluation under which it received the award because of its high quality assurance plan rating was proper and objects to the termination of its contract.

We deny the protest.

The RFP was issued on July 1, 1991, as a small business set-aside. The agency's requirements were divided into two line items. Line item 1 requested offers for 66,560 field packs, while item 2 requested offers for 55,000 field packs on an expedited delivery schedule.

The RFP provided that award would be made to the offeror whose proposal was determined to be the "most advantageous to the government, cost or price, technical quality, and other factors considered." The RFP explained that technical quality would be considered more important than price and listed the technical evaluation factors, in descending order of importance, as follows: (1) Manufacturing Plan; (2) Quality Assurance Plan; and (3) Past Performance.

The RFP explained what was required of offerors under these factors and how each would be evaluated. With respect to the quality assurance plan, the factor at issue here, the RFP provided as follows:

"Offerors are requested to submit a written plan conforming to the requirements of MIL-I-45208A and Amendment 1. If the offeror does not have a MIL-I-45208A Quality Assurance System in-house, at the minimum, the following information shall be provided: the offeror shall submit a Quality Assurance Plan which describes the firm's knowledge and experience of Quality Assurance to include quality control procedures. Offeror may submit an implementation plan for quality assurance controls."

Concerning the evaluation of the plan, the RFP stated that the "Quality Assurance Plan will be evaluated for conformance to MIL-I-45208A and Amend # 1 Inspection System."

The RFP provided that after the technical evaluation, each proposal would be rated and categorized using the following "adjectival rating symbology": (1) HA-Highly Acceptable; (2) A-Acceptable; (3) MA-Marginally Acceptable; and (4) UA-Unacceptable. The RFP further provided that the agency would select the successful offeror based on an "integrated assessment of the proposal submitted." While the RFP did not specifically state that each of the individual evaluation factors would be rated adjectivally, the source selection plan did so state.

The agency received offers from ten firms. Tritex submitted an offer only for line item 1, and DJ submitted an offer for both line items. With respect to line item 1, the agency determined that six of those offers, including those submitted by Tritex and DJ, were in the competitive range.

The agency requested and received best and final offers (BAFO) from those six firms. As relevant here, the final ratings for technical proposals were as follows:

	DJ	Tritek
Manufacturing Plan	A	A
Quality Assurance Plan	A	HA
Past Performance	MA	MA
Overall	A	A

The quality assurance plans of the respective offerors were evaluated by an agency "quality assurance specialist." The rationale in the evaluation record concerning the rating of the plans consists of the statement that DJ's proposal "meets the requirements of MIL-I-45208," and the statement that the Tritek proposal contained a "well written and comprehensive plan that complies with 45208."

Turning to price for line item 1, DJ submitted a unit price of \$29.79, while Tritek submitted a unit price of \$31.50. DJ submitted the low-priced offer for line item 2.

With respect to line item 1, the contracting officer determined that although DJ offered a lower price than Tritek, Tritek's technical proposal was superior to DJ's under the quality assurance plan evaluation factor and therefore worth the additional cost.<sup>1</sup> Specifically, the contracting officer stated that "the higher rating of highly acceptable given to Tritek makes it more likely that the quality control procedures of Tritek will be tighter and the number of defects generated lower in number." Consequently, the agency awarded the contract for the line item 1 quantities to Tritek because it concluded that there was a "greater likelihood of satisfactory performance offered" by the firm. The line item 2 quantities were awarded to DJ.<sup>2</sup>

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<sup>1</sup>Another firm, Fabricated Technology, submitted the low-priced offer under line item 1. Because that firm's technical proposal was found by the agency to be only marginally acceptable, the contracting officer concluded that its offer was not the most advantageous to the government.

<sup>2</sup>The protester initially objected to the award of line item 2 to DJ. The agency addressed this issue in its report. Since the protester has not responded to the agency's rebuttal in its comments, we consider the issue to be abandoned. Vanquard Research, Inc., B-242633; B-242633.2, May 30, 1991, 91-1 CPD ¶ 517.

On February 21, 1992, DJ filed a protest with our Office against the award of the line 1 items to Trittek (B-247675). DJ argued that it should have received the award on the basis of its lower price. On March 26, the agency terminated Trittek's contract for the convenience of the government. The reason given by the agency for the termination was as follows:

"It has been determined that the solicitation . . . does not permit a rating of highly acceptable for Quality Assurance. The solicitation language does not provide a basis for exceeding the requirements of MIL-I-45208. Adherence to MIL-I-45208 can bring with it no higher rating than acceptable."

The agency also pointed out that, except for the evaluation of the quality assurance plan, Trittek and DJ received the same ratings. While the agency did not explicitly set forth its reasoning at that time, it is clear from the record that the agency concluded that its award decision was improper since, by lowering Trittek's rating under the quality assurance plan factor to acceptable, Trittek's and DJ's proposals would receive identical adjectival ratings under all three factors. Under those circumstances, the agency reasoned, DJ's lower-priced proposal would be more advantageous and that firm should receive the award.

DJ subsequently withdrew its protest. On April 6, Trittek filed the current protest. Trittek essentially challenges the agency's termination of its contract. The protester argues that the initial award to it was proper and consistent with the RFP evaluation criteria. The protester asserts that there is no support for the agency's "new" interpretation of the RFP that it could not perform a relative evaluation of the respective quality assurance plans. Moreover, it asserts that if the agency intended to limit its rating of the quality assurance plan to acceptable or unacceptable, it was required to apprise offerors of its intent to do so and allow offerors to compete on that basis.

Our Office generally does not review an agency's decision to terminate a contract for the convenience of the government since that is a matter of contract administration which is not within our bid protest function. However, we will review such a termination where, as here, it is based upon an agency determination that the initial contract award was improper. Rexon Technology Corp.; Bulova Technologies, Inc., B-243446.2; B-243446.3, Sept. 20, 1991, 91-2 CPD ¶ 262.

In essence, the agency's position is that the termination was justified because it determined, after evaluating the

offerors' quality assurance plans on a relative scale and making award on that basis, that the RFP precluded it from doing so. The agency contends that since quality assurance plans were to be evaluated for conformance to MIL-I-45208A, all conforming offers must receive a rating of acceptable, while nonconforming offers must receive a rating of unacceptable.

First, we do not agree with the agency's view that a firm's "conformance" to MIL-I-45208A could only be evaluated on an "acceptable/unacceptable" basis. The military specification cited in the RFP describes the general standards with which a firm's inspection system must conform. It requires that a firm "provide and maintain an inspection system which will assure that all supplies and services submitted to the government for acceptance conform to contract requirements." It sets forth several rather generic standards that the system must meet: the firm's inspection and testing must be "prescribed by clear, complete and current instructions," the firm must "provide and maintain the necessary gages and other necessary devices," etc. These standards afford contractors considerable discretion in the manner in which they are to be satisfied. Thus, in our view, offerors could submit "conforming" plans which may vary considerably in quality and scope and the agency could, as it in fact did, make qualitative distinctions among them. See The Gibson Hart Co., B-232259, Nov. 29, 1988, 88-2 CPD ¶ 529.

The next question is whether, as the DLA argues, the RFP advised offerors that the agency would not make qualitative distinctions among technical proposals under the quality assurance plan evaluation factor. For the reasons stated below, we find that it did not.

Generally, when a solicitation providing for the technical evaluation of proposals does not indicate that the agency is seeking proposals that are simply satisfactory or acceptable, offerors have a reasonable basis for expecting technical proposals to be evaluated and ranked in a way that reflects an offeror's relative technical superiority over a competitor. National Test Pilot School, B-237503, Feb. 27, 1990, 90-1 CPD ¶ 238. This is particularly so when technical factors are weighted more heavily than price.

Here, the solicitation listed the three technical evaluation factors in descending order of importance, weighted them as more important than price, and nowhere stated that the evaluation under any factor would be accomplished on a simple "acceptable/unacceptable" basis. It also provided that each proposal would receive an overall relative technical rating. Since the factors had different weights, such that quality assurance plan was more important than past performance and the overall relative rating was to be

based upon the ratings given under the three technical factors, we think the RFP clearly indicated that a relative rating was to be assigned under each of the three factors. See Lithos Restoration Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Moreover, this relative evaluation approach makes sense in light of the very general nature of MIL-I-45208A. In fact, the agency's own evaluation of the quality assurance plans suggests that the RFP was drafted with the intent that offers were to receive a relative evaluation under this factor.<sup>1</sup>

Accordingly, we do not agree with DLA that the terms of the RFP prohibited it from conducting a relative evaluation of offerors' quality assurance plans. Nevertheless, we do not find that the agency's mischaracterization of the solicitation evaluation factors necessarily means that its actions here were improper. It is clear from the evaluation record that notwithstanding the RFP evaluation scheme, the evaluators were unable to draw a meaningful distinction between the two firms' quality assurance plans. As indicated earlier, the only difference cited between the plans was that, in addition to meeting the requirements of MIL-I-45208A, Trittek's plan was "comprehensive" and "well written" while DJ's plan simply met the requirements. Therefore, it is our view that although DLA chose a faulty legal theory upon which to justify the termination, in fact, the driving force behind DLA's action was its inability to justify the higher rating assigned to Trittek's quality assurance plan and to justify an award based upon Trittek's higher priced proposal.

It therefore appears to us that although the RFP provided for a relative evaluation of quality assurance plans, the agency's needs here would be satisfied by an evaluation scheme which gauged such plans on an "acceptable/unacceptable" basis. While we agree with Trittek that the RFP evaluation scheme did not provide for this, the protester has not argued or even suggested in any way that it would have modified its offer had it known that the agency did not intend to differentiate among proposals which offered acceptable quality assurance plans. For example, there is simply nothing in the record which would indicate that Trittek would have devoted less effort in preparing a quality assurance plan which in turn would have allowed for


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<sup>1</sup>The agency's source selection plan specifically provided that proposals under each of the evaluation factors were to be rated with the relative adjectival terms that were listed in the RFP.

an improvement in another area of its proposal such as manufacturing plan or price.

Under the circumstances, we think that although the agency put forth the wrong rationale for its action, the action itself was reasonable. Further, while the agency's action, in effect, changed the RFP evaluation scheme, there is nothing in the record which shows that the change prejudiced Tritek in formulating its offer. Since we will not sustain a protest in the absence of some evidence in the record that the protester was prejudiced, we deny the protest because the agency's action by, in effect, altering the RFP evaluation scheme did not affect Tritek's competitive position. Tektronix, Inc., B-244958; B-244958.2, Dec. 5, 1991, 91-2 CPD ¶ 516.

The protest is denied.

  
for James F. Hinchman  
General Counsel